

(9) The portion of CSR 38-2-7.4.b.1.I.4. concerning in-kind mitigation plans.

(10) At CSR 38-2-14.12.a.1., the term “commercial forestry.”

(c) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) At CSR 38-2-7.5.j.3.B., the phrase, “except for those areas with a slope of at least 50%” is not approved, and the phrase, “and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered” is not approved.

(2) At CSR 38-2-7.5.j.6.A., the word “excessive” in the phrase “excessive erosion” is not approved.

(3) At CSR 38-2-7.5.o.2., the new planting arrangements and stocking standards are not approved.

(4) At CSR 38-2-7.5.o.2., the words “rock cover” are not approved.

(d) We are not approving the following provision of the proposed blasting-related program amendment that West Virginia submitted on October 30, 2000, and November 28, 2001: At CSR 199-1-4.8.c, the phrase “substantial or significant” is not approved.

(e) Section 22A-3-23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: “*Provided, however*, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.”

(f) Section 22A-3-12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) [Reserved]

(h) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 25, 2004:

(1) At CSR 38-2-7.6.e.1, the word “excessive.”

(2) At CSR 38-2-7.7.e.1, the word “excessive.”

(i) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on June 13, 2005, and modified on August 23, 2005:

(1) At CSR 38-2-5.4.e.1, the words “Impoundments meeting.”

(2) At CSR 38-2-7.4.b.1.J.1(c), the deletion of the words “surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D.”

[48 FR 52053, Nov. 16, 1983, as amended at 50 FR 28323 and 28342, July 11, 1985; 55 FR 21337, May 23, 1990; 61 FR 6535, Feb. 21, 1996; 65 FR 26135, May 5, 2000; 65 FR 50430, Aug. 18, 2000; 65 FR 80328, Dec. 21, 2000; 68 FR 40167, July 7, 2003; 68 FR 68738, Dec. 10, 2003; 70 FR 6590, Feb. 8, 2005; 71 FR 10790, Mar. 2, 2006]

§ 948.13 State statutory and regulatory provisions set aside.

(a)-(b) [Reserved]

(c) The following wording in section 22A-3-23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A-3-12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e)-(f) [Reserved]

[50 FR 35084, Aug. 29, 1985, as amended at 61 FR 6535, Feb. 21, 1996]

§ 948.15 Approval of West Virginia regulatory program amendments.

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when OSM published final rules approving all or portions of those amendments in the FEDERAL REGISTER, and the State statutory or regulatory citations for those amendments (or a brief description of the amendment). The amendments appear in order of the date of publication of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying approval, any conditions placed on the approval, and any exceptions to the approval.

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
October 29, 1981	May 11, 1982	§ 10.
June 17, 1982	September 10, 1982	§ E.03 of the State's coal refuse disposal regulations.
September 14, 1982, October 29, 1982.	March 1, 1983	§§ 4D.04h; 6A.02a.6; 6B.02, .07c.2, f; 7A.02a.6; 12B.07; 15A.01; Part H concerning alternative bonding system.
February 16, 1983, April 29, 1983, June 15, 1983, September 13, 1983.	November 16, 1983	Technical Handbook of Standards and Specifications for Mining Operations; applicability; bond release procedures for interim program permits; incidental mining.
January 12, 1984	September 20, 1984	Chapter 22–4 Series—blaster certification program.
November 20, 1984 ..	April 23, 1985	Chapter 22–4 Series, § 6.01(B), 9—blaster certification program.
March 30, 1984, October 30, 1984, May 20, 1985, June 14, 1985.	July 11, 1985	Reclamation and coal refuse disposal; Transfer of program authority; permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; permit or significant revision to a permit; the coal exploration approval document; civil penalty procedures; assessable and non-assessable violations.
November 11, 1985 ..	March 20, 1986	Financial analysis and supporting documentation demonstrating sufficient money in the special reclamation fund; withdrawals from the fund; noncoal administrative expenses.
June 30, 1986, April 26, 1986.	May 23, 1990	Code of Violations; Replacement of all regulations in chapter 20, Article 6, Series VII and VII-A (1985) with new set of Legislative Rules at title 38, Series 2.
June 29, 1990	October 4, 1991	CSR 38–2 §§ 2, 3, 5, 6, 9, 11 through 14, 17, 20, 22.
July 12, 1991	November 19, 1991	CSR 38–2–20.5, .6, .7.
July 30, 1993	August 16, 1995	CSR 38–2–14.14(b)(4), (g)(1)(B), (g)(8), (11), (12).
June 28, 1993	October 4, 1995, February 21, 1996.	WV Code 22–1–4 through –8; 22–2; 22–3–3, –5, –7, –8, –9, a, –11(a), (g), –12, –13, –15, –17, –18, –19, –22, –26, –28, –40; 22B–1–4 through –12; 22B–3–4; 22B–4; CSR 38–2–1.2, –2, –3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, 27(a), .28, .29, .30, .31(a), .32, .33, .34, –4, .1(a), .2 through .12, –5.2, .4, .5, –6, .3(b), .6, .8, –8.1, –9, –11.1 through .7, –12.2, .3, .4(a), (2)(B), (c) through (e) except the words “other responsible party” at (e) are not approved, .5, –13, –14.5, .8, .11, .12, .14, .15, .17, .18, .19, –15.2, –16.2, –17, –18.3, –20.1, .2, .4 through .7, –22; 38–2C–4, –5, –8.2, –10.1, –11.1; 38–2D–4.4(b), –6.3(a), –8.7(a).
April 2, 1996	July 24, 1996	CSR 38–2–4.12, –5.4(c), –12.2(e), –14.3(c), .14(e)(4), .15(m).
February 23, 1998	July 14, 1998	WV Code Sections 22B–1–7(d), 7(h); 22B–3–4. WV Regulations CSR 38–2–1.2(c)(1). Vacating of retroactive approval published on February 21, 1996.
April 28, 1997	February 9, 1999	W.Va. Code 22–3 Sections 3(u)(2)(1) (decision deferred), (2)(not approved), (3); 3(x), (y) (partial approval), (z) (partial approval); 13(b)(20), (22), (c)(3) (decision deferred); 15(h); 17(b); 18(c), (f); 28 (a–c) (not approved), (d), (e) (decision deferred), (f). WV Regulations CSR 38–2 Sections 2.4, 2.43 (not approved), 2.95 (not approved), 2.108, 2.120; 3.2.e; 3.12.a.1 (partial approval), .2 (partial approval); 3.14.b.7 & .8 deleted, .12.E, .15.B deleted, .13.B; 3.29.a (partial approval); 3.35; 5.5.c; 6.5.a; 8.2.e; 9.2.i.2; 9.3.h.1, .2; 14.11.e, .f, .g, .h; 14.15.b.6.A, .c, .d; 16.2.c (partial approval), .2, .3, .4 (partial approval for .4); 20.1.e
April 28, 1997	May 14, 1999	W.Va. Code 22–3 Section 13(c)(3) [not approved].
May 11, 1998	May 5, 2000	West Virginia regulations at CSR 38–2–2.25; 2.102; 3.32.d.12; 14.16 through 14.19; 22.5.1; 24 (except 24.4).
May 5, 1999	October 1, 1999	CSR 38–2–2.11; 2.78; 3.12.a.2, and .2.B; 3.32.b; 3.35; 14.12.a.1; 16.2.c, and .c.3; and 22.4.g.
March 25, 1999	November 12, 1999	W.Va. Code 22–1–7(a)(7); 22–3–13(a), (b)(3) and (15), (e), and (f); 22–3–13a, in 13a(g) the words “upon request” are not approved, in 13a(j)(2) the phrase “or the surface impacts of the underground mining methods” is not approved; 22–3–22a; 22–3–23(c)(3) decision is deferred; 22–3–24(c), (d), (e), and (f); 22–3–30a, in 30a(a) the phrase “of overburden and coal” is not approved, 30a(c) and (f) are not approved; and 22–3A.
March 14, 2000, March 28, 2000, and April 6, 2000.	August 18, 2000	W.Va. Code 22–3– at 3(e), (u)(2); (y); 13(c)(3) (qualified approval), (c)(3)(B)(iii); 23(c)(1), (2) (partial approval). CSR 38–2– at 2.31, 2.45, 2.98, 2.123, 2.136; 3.8c; 3.25; 7.2.i; 7.3; 7.4.a (qualified approval); 7.4.b.1; 7.4.b.1.A. (qualified approval), 7.4.b.1.B., C. (partial approval), D. (partial approval), E. (qualified approval), F., G. (partial approval), H., I. (partial approval), J. (qualified approval), K.; 14.15.f.
March 14, 2000, March 28, 2000, and April 6, 2000.	12/21/00	CSR 38–2–7.5.(qualified approval), 7.5.a., b., c., d., e. (qualified approval), f. (qualified approval), g. (qualified approval), h. (h.2.B. is a qualified approval), i. (i.1.B., i.3.H., i.3.Q. and i.7.A., and i.10. are qualified approvals), j. (j.2.C. and j.2.E. are qualified approvals; j.3.B. partial approval; j.4. qualified approval, j.6.A. partial approval, j.6.B. qualified approval, j.7. qualified approval), k. (qualified approval), l., m., n., o. (qualified approval; o.2. is a partial approval).
September 24, 2001	December 28, 2001	W. Va. Code 22–1–17; 22–3–11(a), (c), (d), (g) through (n); 22–3–12(a) through (f).

Surface Mining Reclamation and Enforcement, Interior

§ 948.15

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
November 30, 2000; May 2, 2001; November 28, 2001; February 26, 2002; March 8, 2002.	May 1, 2002	Emergency rule provisions: CSR 38–2–3.12.a.1, a.2, a.2.B; 5.4.b.8, d.3; 16.2.c.4. Policy/guidance documents submitted February 26, 2002: Attachments 1A; 2P; 3P and the updated listing (Administrative Record Number WV–1278); 4 except examples 1 and 3 through 8; 6; and 9. Policy/guidance documents submitted March 8, 2002: Attachments 1; 3A; and 8. In House Bill 2663: CSR 38–2–3.12.a.1; 3.14.a; 12.2.e; 12.4.e; 14.8.a.6; 16.2.c.4; and 24.4. In Senate Bill 689: W. Va. Code 22–3–13a(g), (j); 30a(a). CSR 38–2–12.5.d.
September 24, 2001	May 29, 2002	
April 9, 2002	December 3, 2002 ..	CSR 38–2–14.15.a.1, a.2; b.5; b.6.A, b.6.B.1; c, c.1, c.4; d, d.1, d.2, d.3; e, e.1, e.2, e.3; g (partial approval), g.2; i (qualified approval).
April 9, 2002	May 7, 2003	W. Va. Code 22–3–10(b).
June 19, 2002		
May 21, 2001, August 12, 2002.	June 27, 2003	CSR 38–2: 2.31.b.1; 2.43; 2.108; 3.1.i.2; 3.25.a.4; 3.30.d.8; 3.32.e; 5.4.e.2; 7.4.a.1; 7.4.b.1.C.5; 7.4.b.1.D.1; 7.4.b.1.G.1; 7.4.b.1.H.2; 7.4.b.1.I.2; 7.4.b.1.I.3; 7.5.i.1.B; 7.5.i.3.Q; 7.5.i.10; 7.5.j.3.A; 7.5.j.6.A; 7.5.j.6.B; 7.5.o.2; 8.2.b.3; 10.4.a.1.D; 10.6.b.3; 11.2.b; 11.4.a.1; 11.4.a.4; 11.5. (deletion of former); 11.5.a; 12.5.e; 14.12.a.1; 17.3.b.2; 17.4; 17.6; and 22.7.a.
April 9, 2002, June 19, 2002.		
March 18, 2003	July 7, 2003	CSR 38–2–3.2.c, 3.7.d, 3.20 3.22.f.5.A, A.1, and A.2, 5.4.b.4, 5.4.b.11, 5.6, 8.2.e, 9.1.a, 9.3.d, 9.3.f, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, b.7.A, b.7.B, b.8, 14.5.h, 14.14.g.1, g.2 (partial approval; also, approved only to the extent that after removal of erosion protection zones, the stream channel will be restored), and g.3, 14.15.a.2, c, and g, 17.1, 20.6.a, c, and d, e, f, and j, 22.4.g.3.A and i.6, 24.2.a, 24.3, and 24.4. CSR 38–4–25.14.
		CSR 38–2–2.39 (a deletion), 3.22.e, 3.31.a (deferral), 3.32.g, 5.2.a, and 11.3.a.3.
May 2, 2001, July 1, 2003.	December 1, 2003 ..	
October 30, 2000, November 28, 2001.	December 10, 2003	W.Va. Code 22–3–13a(a)(3), (b), (c), (f)(14), (g); 22a(a), (b), (e), (f), (g); 30a(b), (b)(3), (b)(3)(C), (b)(5), (c), (d), (e), (f), (h). Code of State Regulations CSR 199–1, except as identified at 30 CFR 948.12(d), and subdivision 3.10.d is a qualified approval.
March 14, 2000, March 28, 2000, and April 5, 2000.	June 17, 2004	CSR 38–2–7.4.b.1.i.
March 25, 2004	February 8, 2005	CSR 38–2–3.12.a.1; 7.6 (except the word “excessive” at 7.6.e.1); 7.7 (except the word “excessive” at 7.7.e.1); 9.3.g; 14.15.a.1; 14.15.g; 20.1.a.6; 22.5.a; 23 (deleted); and 24. Reduced Inspection Frequency Policy dated November 3, 2004.
October 17, 2005, and amended November 4, 2005.	December 30, 2005	CSR 38–2–11.3.a.3.
June 13, 2005, and modified on August 23, 2005.	March 2, 2006	W.Va. Code 22–3–11(h)(2)(B); 11a; 32a; 22–27–1 through 12. CSR 38–2–2.92; 3.29.a; 5.4.a, b.9, b.10, b.12, c.7, d.3, d.4, e.1, f; 7.4.b.1.A.1, A.3, A.3(b), A.4, B.1, C.1, C.2, C.3, C.4, C.5, D.6, D.8, D.9, D.11, H.1, H.2, H.6, I.1, I.2, I.3, I.4, J.1; 7.5.a, b.3, i.10, j.3.A, j.3.B, j.3.E, I.4.A, o.2; 9.3.d, 9.3.e; 14.5.h, 14.14.g.2.A.6; 14.15.c.3; 20.6.d, 20.6.j. CSR 199–1–2.36a, 2.36b, 2.37; 3.3.b, 3.7; 4.8, 4.8.c, 4.8.f, 4.8.g, 4.9; Water Rights and Replacement Policy (August 1995); September 2003 MOA between WVDEP, DMR and WVDNR, Wild Resources Section; Permittee’s Request for Release form, Item 11, dated March 2005.
		W. Va. Code 22–3–24(c), (d), (e), and (h). CSR 38–2–7.2.e.1; 7.3.d; and 7.8 (qualified approval).
April 17, 2006	August 28, 2006	
April 17, 2008	June 16, 2008	W. Va. Code 22–3–11(g) (interim approval), 11(h)(1) (interim approval).
March 22, 2007	December 24, 2008	CSR 38–2–2.39 (deletion of cumulative impact definition). CSR 38–2–3.22.e (approval of material damage to the hydrologic balance definition).
		W. Va. Code 22–3–11(h)(1) (interim approval).
May 28, 2009	July 22, 2009	
May 2, 2011	June 29, 2011	W. Va. Code 22–3–7(b); 8(a)(4); 19(a)(4); 19(b)(2); 19(b)(3); 19(d); and 19(e) (interim approvals). CSR 38–2–11.4.a.2 (interim approval).

[62 FR 9957, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 948.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.